

## Internal Revenue Service

Department of the Treasury  
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Person To Contact:  
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Telephone Number:

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PLR-133876-09  
Date:  
January 15, 2010

### Legend

Husband	=
Wife	=
Date 1	=
Trust	=
Child 1	=
Child 2	=
Child 3	=
Child 4	=
Trust 1	=
Trust 2	=
Trust 3	=
Trust 4	=
Accountant	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Year 7	=
Year 8	=
Year 9	=
a	=
b	=

Dear :

This responds to your authorized representative's letter dated July 20, 2009, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate your generation-skipping transfer (GST) tax exemptions to transfers to trusts.

The facts and representations submitted are summarized as follows: On Date 1, Husband and Wife (Taxpayers) created an irrevocable trust (Trust) for the benefit of their four children and their issue. Pursuant to the terms of Trust, at the time of its execution the trustee divided the trust estate equally into four separate trusts, one for the benefit of each child. Accordingly, Trust 1 is for the benefit of Child 1 and her issue, Trust 2 is for the benefit of Child 2 and her issue, Trust 3 is for the benefit of Child 3 and his issue, and Trust 4 is for the benefit of Child 4 and his issue.

Husband and Wife each made gifts to Trusts 1, 2, 3, and 4 in Years 1, 2, 3, 4, 5, 6, 7, 8, and 9. Husband and Wife elected under § 2513 to split their gifts to the trusts and each spouse filed a separate Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return (gift tax return) for each year. This request for a ruling pertains to gifts made to each trust in Years 5, 6, 7, and 8.

Taxpayers each made gifts to Trusts 1, 2, 3, and 4 in Year 5 in the amount of \$a, Year 6 in the amount of \$b, Year 7 in the amount of \$b, and Year 8 in the amount of \$b. On the gift tax returns prepared by Taxpayers' Accountant, Accountant failed to allocate any part of either Taxpayer's GST tax exemption to the transfers to the trusts.

It is represented that Taxpayers have sufficient GST tax exemption to allocate to the transfers to the four trusts in Years 5 through 8 and would have done so on their gift tax returns had they been aware of the issue. It is also represented that no distributions have been made from either trust to a skip person as defined in § 2613.

Taxpayers request an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make allocations of their GST tax exemption to the Year 5, Year 6, Year 7, and Year 8 transfers to the trusts.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the "applicable rate." Section 2641(a) defines applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the

“applicable fraction.” The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as in effect for the tax years at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(4) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes, and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall, by regulation, prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an

extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(b) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Taxpayers are granted an extension of time of 60 days from the date of this letter to allocate each of Taxpayer's available GST exemption to the Years 5 through 8 transfers to Trusts 1, 2, 3, and 4. The allocations will be effective as of the date of the respective transfers.

The allocations should be made on supplemental Forms 709 for the years in which the transfers were made, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. A copy of this letter is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the Taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

Sincerely,

Curt G. Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy for section 6110 purposes  
Copy of this letter

cc: